

Committee Name and Date of Committee Meeting

Cabinet – 20 November 2023

Report Title

Cumulative Impact Assessment (Licensing Act 2003)

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

The Council published a Cumulative Impact Assessment for the first time in 2020, alongside a full review of the Council's Statement of Licensing Policy and Cumulative Impact Statement, as part of the Licensing Act 2003. Although the Council's Licensing Policy is not required to be reviewed until 2025, the Cumulative Impact Assessment must be reviewed every three years.

The Council's current Cumulative Impact Assessment impacts a part of Wickersley North, and Thurcroft and Wickersley South wards.

The current Cumulative Impact Assessment has been reviewed and consulted upon. The findings of the review and consultation are detailed in this report alongside presenting the Cumulative Impact Assessment recommended for adoption.

Recommendations

1. That Cabinet adopts the Cumulative Impact Assessment that is attached to this report as Appendix 1.

List of Appendices Included

- Appendix 1 Rotherham MBC Cumulative Impact Assessment 2023
- Appendix 2 Summary of Consultation Responses
- Appendix 3 Equalities Screening Assessment
- Appendix 4 Carbon Impact Assessment

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Cumulative Impact Assessment (Licensing Act 2003)

1. Background

- 1.1 The concept of Cumulative Impact was introduced through Section 182 Statutory Licensing Guidance, issued by the Home Office since the implementation of the 2003 Licensing Act. The Policing and Crime Act 2017 gave Cumulative Impact a statutory basis, allowing a licensing authority to publish a Cumulative Impact Assessment.
- 1.2 In 2020, the Council implemented a Cumulative Impact Policy, as part of the Statement of Licensing Policy, which outlined the Council's approach to Cumulative Impact within the Borough. The Policy included a cumulative impact assessment for an area of Wickersley, as the Council believed that the number of licensed premises within the area was such that any further premises would be inconsistent with the promotion of the licensing objectives.
- 1.3 This Cumulative Impact Assessment set out the evidence for the Council's opinion and was introduced after extensive consultation with residents, local businesses, responsible authorities and partners.
- 1.4 The Cumulative Impact Assessment does not create a ban on the grant of licences within the assessed zone but does place an obligation on the applicant to demonstrate that the application is suitable for the area. The applicant must provide suitable evidence that their proposal will not add to the cumulative impact within the area.
- 1.5 The Cumulative Impact Assessment has now been reviewed and consulted upon, further detail is provided below.

2. Key Issues

- 2.1 The Council's Cumulative Impact Assessment is required to be reviewed every three years. This review must be consulted upon, with any revisions published alongside an appropriate evidence base.
- 2.2 The Council has carried out a wide-ranging consultation with residents and all relevant stakeholders, to assess the effectiveness of the current assessment and consider any changes or suggestions that may be raised.
- 2.3 In total, there have been 53 responses to the consultation, 47 of which relate to Wickersley. The key findings of the consultation are outlined below:

Wickersley

- 2.4 42 of the 47 responses were from local residents, all of whom stated that they had experienced noise disturbance and littering / dumping of rubbish in the last 12 months.

- 2.5 In addition, all but two of the residents that responded indicated that they have experienced vandalism / criminal damage or antisocial behaviour in the last 12 months.
- 2.6 Five Wickersley based businesses responded to the consultation, all of whom disagreed that the Cumulative Impact Assessment has had a positive impact on their business. However only two of those expressed the view that the Cumulative Impact Assessment has prevented them from carrying out their business activities / interests.
- 2.7 In addition to the above, detailed responses were received from Wickersley Parish Council and Borough Councillors representing the Wickersley area. Both of these responses were supportive of maintaining the current zone that covers the Wickersley area.
- 2.8 In view of this, the Council is proposing to maintain the current provision with regard to the Cumulative Impact Assessment in Wickersley.

Parts of the Borough other than Wickersley

- 2.9 Six of the 53 responses related to parts of the Borough other than Wickersley, all but one of which were from local residents.
- 2.10 All of the local residents that responded stated that they had experienced noise disturbance in the last 12 months, and three stated that they experienced anti-social behaviour.
- 2.11 One resident said that they had experienced littering / dumping of rubbish and vandalism / criminal damage (this was the same respondent). This respondent also felt that the combined impact of the licensed premises in their area was having an adverse impact on their quality of life, and the number and type of licensed premises in their area was having a negative impact on the area.
- 2.12 The business that responded to the consultation felt that the introduction of a Cumulative Impact Assessment in their area would not have a positive impact on their business, and that it would prevent them from carrying out their business activities.
- 2.13 Taking the above into consideration, the Council is not proposing to introduce a Cumulative Impact Assessment in any other part of the Borough as there is limited evidence that this is required or would be appropriate.
- 2.14 The outcome of the review is that it would not be appropriate to amend the current Cumulative Impact Assessment, and that it should therefore remain in place until the next review (which will be within a maximum of three years).
- 2.15 The proposed Cumulative Impact Assessment is attached to this report as Appendix 1. This document outlines the evidence that was considered as part of the review.

3. Options considered and recommended proposal

3.1 Option 1

Cabinet could adopt the Cumulative Impact Assessment detailed at Appendix 1, with a further review to be carried out within three years.

3.2 Option 2

Cabinet could choose not to adopt the proposed Cumulative Impact Assessment. If this were to happen, then the regulatory position in Wickersley would revert to that in every other part of the Borough.

3.3 The preferred option is Option 1. This option takes into account the responses received during the consultation. The proposed changes detailed in this report reflect the views of the public, the Council and its partners, and would form a Cumulative Impact Assessment that has a positive impact on licensed premises within the relevant area.

4. Consultation on proposal

4.1 Consultation has taken place with members of the public, and those affected by the Cumulative Impact Assessment. This consultation has taken the form of:

- Direct contact with representatives of businesses / organisations that are directly affected by the policy.
- Responsible Authorities in relation to the Licensing Act 2003.
- Statutory consultees as defined by the legislation.
- Online consultation via the Council's website.
- Direct mail contact with local residents (a mailshot to over 1000 randomised residential addresses within the Rotherham Borough).
- Public drop in sessions throughout the Borough.
- Consultation at Rotherham Show.
- Contact with groups / organisations representing specific sectors of our communities.
- Direct contact with individuals that have previously responded to a consultation regarding the development of this policy (where their details are known).
- Consultation with local ward Members.
- Publicity via local newsletters and mailings.
- Press releases / social media publicity raising awareness of the policy review.

4.2 The outcomes of the consultation are detailed in section 2 of this report and further detail is provided at appendix 2.

5. Timetable and Accountability for Implementing this Decision

5.1 If adopted, the revised assessment will become effective immediately.

5.2 If adopted the assessment will be published on the Council's website as soon as possible.

6. Financial and Procurement Advice and Implications

6.1 All costs associated with this consultation will be contained within the approved revenue budget for the Licensing Service and are expected to be minimal.

6.2 There are no procurement related implications introduced by this report.

7. Legal Advice and Implications

7.1 Section 5A of the Licensing Act 2003 states that where a Licensing Authority has published a cumulative impact assessment, they must review the assessment before the end of the relevant period. The relevant period is defined as the period of three years beginning with the publication of the cumulative impact assessment or a revision of the cumulative impact assessment.

7.2 The Licensing Authority must consider whether it remains of the opinion stated in the assessment. Before deciding whether it remains of the opinion it must consult those listed in section 5(3) of The Licensing Act 2003. If the Licensing Authority is no longer of that opinion a statement to that effect must be published, if the Licensing Authority remains of that opinion, it must revise the cumulative impact assessment so that it includes a statement to that effect and also sets out the evidence as to why the authority remains of that opinion. Section 14 of the Statutory Guidance issued under section 182 of the Licensing Act 2003 provides detailed information about the evidence of cumulative impact and the steps required to publishing a cumulative impact assessment. It is crucial that the evidential basis for the cumulative impact assessment being implemented is detailed, this should include statistics where available.

7.3 The Council has complied with the requirements for consultation. All consultation responses should be fully considered and will contribute towards the evidential basis for the implementation of the cumulative impact assessment.

7.4 In accordance with the Licensing Act 2003, the Council must within 3 years of publishing a cumulative impact assessment, consider whether it remains of the opinion set out within that assessment. Option 1 as the recommended option will ensure that the Council is complying with Statutory requirements and this will minimise the risk of legal challenge.

7.5 A Licensing Authority must publish any revision of a cumulative impact assessment. Although the Council's Licensing Policy and Statement of Policy is not required to be reviewed until 2025 the licensing statement must summarise any cumulative impact assessments published and therefore a revision may be required prior to 2025, if deemed appropriate. Where

revisions are made, the licensing authority must publish a statement of the revisions or the revised licensing statement.

8. Human Resources Advice and Implications

8.1 There are no HR implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 The protection of children from harm is one of the Licensing Objectives; however, a statement of licensing policy should not seek to limit the access of children to any premises unless it is appropriate for the prevention of physical, moral or psychological harm to them.

9.2 The Cumulative Impact Assessment should be considered in conjunction with the Council's Licensing Act 2003 Policy.

9.3 It may not be possible for licensing policy statements to anticipate every issue of concern that could arise in respect of children in relation to individual premises and therefore the individual merits of each application should be considered in each case.

9.4 A statement of licensing policy should make clear the range of alternatives which may be considered for limiting the access of children where that is appropriate for the prevention of harm to children.

9.5 Statements of policy should also make clear that conditions which require children to be admitted in all circumstances cannot be imposed on licenses or certificates. Where the restriction of children is not appropriate, it remains a matter for the discretion of the individual licence holder, club or premises user.

9.6 The statement includes reference to model conditions that may be used to promote the protection of children from harm.

10. Equalities and Human Rights Advice and Implications

10.1 There are no implications for equalities or human rights as the proposed amendment will be within existing legal frameworks.

10.2 An Equalities Screening Assessment is attached at Appendix 3.

11. Implications for CO2 Emissions and Climate Change

11.1 This report does not introduce any implications for CO2 emissions or climate change. A Climate Impact Analysis is attached as Appendix 4.

12. Implications for Partners

12.1 There no implications envisaged from this report for partners or other Directorates.

13. Risks and Mitigation

- 13.1 The Council's Cumulative Impact Policy must be reviewed every three years as a minimum. If the policy is not reviewed appropriately, the Council could be open to legal challenge if an application is rejected or amended using a current Cumulative Impact Assessment. The Council will mitigate this risk by carrying out the consultation recommended within this report, and using this to make any relevant changes.

14. Accountable Officers

Alan Pogorzelec, Licensing Manager

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	06/11/23
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	01/11/23
Assistant Director of Legal Services (Monitoring Officer)	Phil Horsfield	01/11/23

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